

HOUSE BILL 550

By Shepard

AN ACT to amend Tennessee Code Annotated, Title 56,
relative to the unregulated secondary discount
market.

WHEREAS, the Tennessee General Assembly finds the unregulated secondary discount market is not only increasingly sophisticated, but has evolved in a part of the system that lacks transparency; and

WHEREAS, the number of intermediary entities involved in the health care claims payment process is also increasing dramatically. "Rental network PPOs" exist to market a physician's contractually-discounted rates primarily to third-party payers, such as insurance brokers, third-party administrators, local or regional PPOs, or self-insured employers. Rental network PPOs may also rent their networks and associated discounts to entities such as "network brokers," "repricers" or "aggregators" whose sole purpose is finding and applying the lowest discounted rates, often without physician authorization. Many of these entities provide no value whatsoever, but exist for the sole purpose of trafficking in physician discounts; and

WHEREAS, in this era of consumer-driven healthcare, patients are having an increasingly difficult time assessing the true cost of their health care. While the discounter profits from covertly undercutting the appropriate payment to the physician, it shares little if any information regarding its actions with the patient or physician; and

WHEREAS, without this information, it becomes extremely difficult for individual physicians to detect and/or identify how much they are going to be paid for a particular service and by whom and for patients to determine their share of the cost of their medical care. As a result, the patient oftentimes pays a greater portion of the total bill and the payer ends up paying less; now, therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Regulation of the Secondary Market in Physician Discounts Act."

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Contracting agent" means an insurance entity engaged, for monetary or other consideration, in the act of leasing, selling, transferring, aggregating, assigning or conveying a physician or physician panel to provide health care services to beneficiaries;

(2) "Insurance entity" includes, but is not limited to, any entity responsible for payment or coordination of health care services, including but not limited to all entities that pay or administer claims on behalf of other entities; and

(3) "Payer" means a self-insured employer, health care service plan, insurer, or other entity that assumes the risk for payment of claims or reimbursement for services provided by contracted physicians.

SECTION 3.

(a) All contracting agents currently doing business in the state shall register with the department of commerce and insurance within thirty (30) days from the effective date of this act. Any contracting agent not doing business in this state on the effective date of this act must register within thirty (30) days of becoming a contracting agent.

(b) A contract between a physician and a contracting agent shall comply with all of the following requirements:

(1) Contain all material terms consistent with Tennessee law;

(2) Clearly and in a separate section, name any payer eligible to claim a discounted rate;

(A) Any payers seeking eligibility to claim a discounted rate, directly or indirectly, subsequent to the original execution of the contract

must be added to the contract through a separate amendment to the contract that is signed by the physician; and

(B) Any amendment naming additional payers shall be presented to the physician for signature ninety (90) days prior to any anticipated disclosure, lease, sale, transfer, aggregation, assignment, or conveyance of the physician's discounted rate;

(3) Identify and highlight all amendments made to the contract;

(4) Contain a provision identifying the right of the physician to affirmatively opt in or opt out of any agreements to lease, sell, transfer, aggregate, assign or convey a physician panel and associated discounts without penalty, sanction, or retaliation of any kind;

(5) Contain provisions informing the physician of the physician's contracting and payment rights as set forth in title 56, chapters 7 and 32;

(6) Contain a provision fully disclosing any access fee or other remuneration the contracting agent may receive and the specific benefits and service the contracting agent will provide;

(7) Contain a provision that requires the contracting agent to obligate any payer or insurance entity, through contract, to not further disclose, lease, sell, transfer, aggregate, assign or convey the physician panel and associated discounts to any other payer, contracting agent or insurance entity; and

(8) Contain a provision that requires upon the termination of the physician-contracting agent contract, the contracting agent to notify each payer or insurance entity that the payer or insurance entity is no longer authorized to:

(A) Access the physician's discounted rate; or

(B) Disclose, lease, sell, transfer, aggregate, assign, or convey

the physician's discounted rate.

(c) A contracting agent that proposes to sell, lease, assign, transfer or convey a physician's name, contracted rate or any other information must have a direct contract with the physician.

(d) A contracting agent shall ensure through contract terms that all payers to which it has leased, sold, transferred, aggregated, assigned or conveyed a physician panel and its associated discounts comply with the underlying contract between the contracting agent and the physician and pay the physician pursuant to the rates of payment and methodology set forth in the underlying contract.

(e) A contracting agent shall not lease, sell, transfer, aggregate, assign or convey its physician panel and associated discounts or any other contractual obligation to any entity that is not a payer.

(f) The contract between the contracting agent and physician will neither authorize nor require the physician to consent to the sale of the physician's name and contracted rates for use with more than a single product or line of business.

(g) The contract between the contracting agent and the physician will neither authorize nor require the physician to consent to the sale of the physician's name and contracted rate more than once.

(h) After receiving information from a contracted physician that a payer to whom a contracting agent has leased, sold, transferred, aggregated, assigned or conveyed its physician panel and associated discounts is not complying with the terms of the underlying contract, including, but not limited to, statutory requirements for timely and accurate payment of claims, and the contracted physician has fulfilled the appeal or grievance process described in the underlying agreement, if any, without satisfaction, the contracting agent shall, within forty-five (45) days, do at least one (1) of the following:

(1) Ensure the payer causes correct payment to be made to the physician;

(2) Ensure the payer otherwise complies with the terms of the underlying contract or terminate the contracting agent's agreement with the payer; or

(3) Assume direct responsibility for the payment of the claim in question by paying the physician the amount owed under the contract and in the manner required by Tennessee law.

(i) A contracting agent shall require those payers and insurance entities that are by contract eligible to claim a physician's contracted rates to cease claiming entitlement to those rates upon termination of the underlying contract between the contracting agent and the physician or upon termination of the physician's authorization for the payer to pay the contracted reimbursement rate as permitted under the terms of the contract between the contracting agent and the physician.

(j) Beginning on January 1, 2008, any explanation of benefits or remittance advice issued in Tennessee in electronic or paper format shall include the identity of the entity authorized to have leased, sold, transferred, aggregated, assigned or conveyed the physician's name and associated discount.

(k) Beginning on January 1, 2008, a payer, or any representative of the payer, processing claims or claims payments, shall clearly identify, in electronic or paper format, on the explanation of benefits or remittance advice, the entity assuming financial risk for services and the identity of the contracting agent through which the payment rate and any discount are claimed. A copy of the underlying contract must be provided to the physician upon request within ten (10) business days.

(l) Beginning on January 1, 2008, where the insurance entity, contracting agent, or payer issues member or subscriber identification cards, the cards shall, in a clear and

legible manner, identify any third-party entity, including any contracting agent, responsible for paying claims and any third-party entity, including a contracting agent, whose contract with a payer controls or otherwise affects reimbursement for claims filed pursuant to the subscriber contract.

(m) No payer, payer representative, administrator of claims payment, or other third party acting on behalf of a payer shall be eligible to claim or otherwise proffer a physician's specific contracted rate for services except to the extent that the rate is based on the contract that directly controls payment for services provided to that patient and is reflected on the explanation of benefits or remittance advice and on any patient identification card issued to the patient.

(n) Nothing in the contract between the contracting agent and the physician shall supersede the provisions of this act.

(o) In coordination with relevant state law, no insurance entity may retaliate against a physician for exercising the right of action provided under this act.

(p) The commissioner of commerce and insurance is authorized to assess fines and penalties to any entity found in violation of this act.

(q) Nothing in this act prohibits or limits any claim or action for a claim that the physician has against an insurance entity or contracting agent. All applicable administrative fines and penalties apply.

SECTION 4. This act does not apply to a non-profit insurance entity acting in accordance with an out-of-state sister organization operating under the same general name of the national organization, unless the entity should choose to lease its network to an unaffiliated insurance entity or third party administrator.

SECTION 5. The commissioner of commerce and insurance is authorized to assess up to a one thousand dollar (\$1,000) fine per day against a contracting entity doing business in

Tennessee that has not registered with the department according to the requirements of this act or for other violations of this act in accordance with the provisions of Tennessee Code Annotated, Title 56.

SECTION 6. If any provision of this act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are hereby declared severable.

SECTION 7. For purposes of promulgating rules, this act shall take effect on becoming a law, the public welfare requiring it. For all other provisions, this act shall take effect on January, 1, 2008, the public welfare requiring it.